

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
April 6, 2004 Session

JAMES R.W. REYNOLDS v. STATE OF TENNESSEE

**Direct Appeal from the Circuit Court for Coffee County
No. 31,019 L. Craig Johnson, Judge**

No. M2003-00112-CCA-R3-HC - Filed June 8, 2004

The petitioner appeals the summary dismissal of his petition for writ of habeas corpus, arguing that the indictment, which charged him with two counts of aggravated rape but which cited the statute for aggravated sexual battery, failed to give him sufficient notice of the charges he would be required to defend, thereby depriving the convicting court of jurisdiction and rendering his judgments void. The petitioner further argues that the judgments failed to satisfy the requirements of Rule 32(e) of the Tennessee Rules of Criminal Procedure because they failed to reference the aggravated rape statute. Having reviewed the entire record, we conclude that the petitioner has failed to state a claim for habeas corpus relief. Accordingly, we affirm the judgment of the trial court dismissing the petition for writ of habeas corpus.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ALAN E. GLENN, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

Thompson G. Kirkpatrick, Manchester, Tennessee, for the appellant, James R.W. Reynolds.

Paul G. Summers, Attorney General and Reporter; Helena Walton Yarbrough, Assistant Attorney General; and C. Michael Layne, District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

In April 1985, the petitioner, James R.W. Reynolds, was charged by the Coffee County Grand Jury with two counts of aggravated rape for sexually penetrating his seven-year-old daughter and his six-year-old son in December 1984. On January 23, 1986, he pled guilty in the Circuit Court of Coffee County to both counts of the indictment and was sentenced as a Range I, standard offender to concurrent terms of thirty-five years on each count, for an effective sentence of thirty-five years in the Department of Correction.

On March 5, 2001, the petitioner filed a *pro se* petition for writ of habeas corpus in the Circuit Court of Coffee County in which he alleged, *inter alia*, that his guilty pleas were unknowing and involuntary. The petitioner requested that he be allowed to withdraw his guilty pleas or, in the alternative, that the trial court reduce his sentence in accordance with Rule 35 of the Tennessee Rules of Criminal Procedure. On March 23, 2001, the trial court dismissed the petition, finding that the petitioner did not state any grounds for habeas corpus relief and that the time limit for requesting a reduction of sentence had long since expired.

On May 22, 2002, the petitioner filed a second *pro se* habeas corpus petition in the Circuit Court of Coffee County, once again alleging that his guilty pleas were involuntary, but also challenging the sufficiency of his indictment based on the “improperly list[ed] particulars” contained in each count, and the fact that “there are no such charge(s) under T.C.A. that list Aggravated Sexual Rape.” On July 11, 2002, the trial court summarily dismissed the petition, finding that it failed to state a cognizable claim for habeas corpus relief. The trial court subsequently denied the petitioner’s motion to reconsider. On August 26, 2003, the trial court appointed counsel to represent the indigent petitioner on appeal.

ANALYSIS

The petitioner raises three issues on appeal: (1) whether the indictment was insufficient to apprise him of the offenses he was called upon to defend, thereby depriving the convicting court of subject matter jurisdiction and rendering the judgments void; (2) whether the judgments entered by the convicting court satisfied the requirements of Rule 32(e) of the Tennessee Rules of Criminal Procedure; and (3) whether the trial court erred in summarily dismissing his petition without an evidentiary hearing. Because the determination of whether habeas corpus relief should be granted is a question of law, our review is *de novo* with no presumption of correctness given to the trial court’s findings. See McLaney v. Bell, 59 S.W.3d 90, 93 (Tenn. 2001); Hart v. State, 21 S.W.3d 901, 903 (Tenn. 2000).

The remedy provided by a writ of habeas corpus is limited in scope and may only be invoked where the judgment is void or the petitioner’s term of imprisonment has expired. State v. Ritchie, 20 S.W.3d 624, 629 (Tenn. 2000); State v. Davenport, 980 S.W.2d 407, 409 (Tenn. Crim. App. 1998). A void, as opposed to a voidable, judgment is “one in which the judgment is facially invalid because the court did not have the statutory authority to render such judgment.” Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998); see also Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). The judgment of a court of general jurisdiction is conclusive and presumed to be valid, and such a judgment can only be impeached if the record affirmatively shows that the rendering court was without personal or subject matter jurisdiction. Archer v. State, 851 S.W.2d 157, 162 (Tenn. 1993). Thus, habeas corpus relief is available only when “‘it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered’ that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant’s sentence of imprisonment . . . has expired.” Archer, 851 S.W.2d at 164 (citation omitted). Although in most instances a challenge to the sufficiency of an indictment is not a proper claim to raise in a habeas corpus

proceeding, see Haggard v. State, 475 S.W.2d 186, 187-88 (Tenn. Crim. App. 1971), “the validity of an indictment and the efficacy of the resulting conviction may be addressed in a petition for habeas corpus when the indictment is so defective as to deprive the court of jurisdiction.” Dykes, 978 S.W.2d at 529.

The petitioner argues that the indictment in this case was fatally defective, thereby robbing the convicting court of subject matter jurisdiction and rendering the judgments void on their face, because it included a reference to the statute that was then in effect for aggravated sexual battery. The State points out that the correct statute then in effect for aggravated rape was cited in the body of the charge, and argues that the indictment met all constitutional and statutory requirements of providing notice to the accused. We agree with the State.

An indictment must inform the accused of “the nature and cause of the accusation.” U.S. Const. amend. VI; Tenn. Const. art. I, § 9. In addition, Tennessee Code Annotated section 40-13-202 requires that an indictment:

state the facts constituting the offense in ordinary and concise language, without prolixity or repetition, in such a manner as to enable a person of common understanding to know what is intended, and with that degree of certainty which will enable the court, on conviction, to pronounce the proper judgment.

An indictment that achieves its “overriding purpose of notice to the accused will be considered sufficient to satisfy both constitutional and statutory requirements.” State v. Hammonds, 30 S.W.3d 294, 300 (Tenn. 2000). Our supreme court has held that an indictment is sufficient to satisfy notice requirements if it “contains allegations that (1) enable the accused to know the accusation to which answer is required; (2) furnish the trial court an adequate basis for entry of a proper judgment; and (3) protect the accused from a subsequent prosecution for the same offense.” Id. at 299 (citing State v. Hill, 954 S.W.2d 725, 727 (Tenn. 1997)).

The indictment here clearly satisfied the overriding purpose of providing notice to the petitioner of the offenses with which he was charged. The top left hand corner of the indictment contains a handwritten parenthetical citation to “TCA 39-2-606,” the statute then in effect for aggravated sexual battery, immediately beneath the handwritten words, “Aggravated Sexual Rape.”¹ However, despite that obvious clerical error, count one specifically charges that the petitioner:

on the _____ day of December, 1984, in [Coffee County], unlawfully,
wilfully, knowingly and feloniously did commit the offense of

¹ Compare Tenn. Code Ann. § 39-2-606 (1982) (repealed 1989), “Aggravated Sexual Battery,” with Tenn. Code Ann. § 39-2-603 (1982) (repealed 1989), entitled “Aggravated Rape.” Tennessee Code Annotated section 39-2-603(a)(4) provides that “[a]ggravated rape is unlawful penetration of another” when “[t]he victim is less than thirteen (13) years of age.”

aggravated rape by unlawfully sexually penetrating the person of [J.R.],² a minor child seven (7) years of age, in violation of Tennessee Code Annotated Section 39-2-603(4) and against the peace and dignity of the State of Tennessee.

Count two of the indictment charges that the petitioner:

on the ____ day of December, 1984, in [Coffee County], unlawfully, willfully, knowingly and feloniously did commit the offense of aggravated rape by unlawfully sexually penetrating the person of [B.R.] a minor child six (6) years of age, in violation of Tennessee Code Annotated section 39-2-603(4) and against the peace and dignity of the State of Tennessee.

The petitioner cites two orders for the appointment of counsel and an order of arraignment, which refer to the offenses as aggravated sexual battery rather than aggravated rape, to assert that “a series of legal scholars . . . each interpreted the indictment to charge the Defendant with the offense of aggravated sexual battery.” However, we agree with the State that these various orders have no relevance to the sufficiency of the indictment itself.³ Although the wrong statute was set out in the upper left hand corner, the indictment nonetheless put the petitioner on notice that he was being charged with two counts of aggravated rape for sexually penetrating his six-year-old son and seven-year-old daughter in December 1984 in Coffee County. Moreover, the correct code section for the offense of aggravated rape of a child under the age of thirteen is cited in the body of the charge in each count of the indictment. “So long as an indictment performs its essential constitutional and statutory purposes, a defect or omission in the language of the indictment will not render the judgment void.” Hart, 21 S.W.3d at 903 (citing Dykes, 978 S.W.2d at 529). We conclude, therefore, that the petitioner is not entitled to habeas corpus relief on the basis of this claim.

The petitioner also argues that the judgments do not satisfy the requirements of Rule 32(e) of the Tennessee Rules of Criminal Procedure and are therefore invalid, because they fail to contain a reference to the statute under which he was convicted. The State asserts there is nothing in Rule 32(e) that requires reference to the statute under which a defendant is convicted, and argues that the judgments are valid. We again agree with the State. Rule 32(e) provides:

Judgment. – A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be

² It is the policy of this court to refer to minor victims of sexual assault by their initials only.

³ We note that the Coffee County Circuit Court acted to correct the errors in these orders by entry of an “Amended Order” on January 23, 1986, which stated: “All orders heretofore filed in this cause are amended by deleting the words ‘Aggravated Sexual Battery’ w[h]ere applicable and inserting in lieu thereof ‘Aggravated Rape.’”

discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

The judgments reflect that the petitioner pled guilty to two counts of aggravated rape and was sentenced as a Range I, standard offender to concurrent terms of thirty-five years in the Department of Correction. They are dated, signed by the convicting court, the district attorney, and counsel for the petitioner, and the record reflects that they were entered into the minute book by the court clerk. As the State observes, Rule 32(e) does not specifically require that the statute under which the petitioner was convicted be cited in the judgment. Furthermore, we note that under the 1989 Sentencing Act, which we recognize was enacted after the petitioner's convictions, a judgment form "shall be returned to the sentencing court" for the completion of any omitted information. Tenn. Code Ann. § 40-35-209(g) (2003). On that basis, this court has concluded that a "technical" omission in a standard judgment form does not render a judgment void and is therefore not a basis for habeas corpus relief. See Roger Lynn Perry v. Tony Parker, Warden, No. W2003-02342-CCA-R3-HC, 2004 WL 370258, at *1 (Tenn. Crim. App. Feb. 27, 2004), applic. for perm. to appeal filed (Tenn. Apr. 12, 2004). We, similarly, conclude that the failure to include the relevant code section for aggravated rape in the petitioner's judgment forms does not render his convictions void and is not a basis for habeas corpus relief.

As his last issue, the petitioner argues that the trial court erred in dismissing his petition without holding an evidentiary hearing to make further inquiry into his claims. The trial court may, however, summarily dismiss a petition for writ of habeas corpus when the petition does not state a cognizable claim for relief. See Tenn. Code Ann. § 29-21-109 (2000); McLaney, 59 S.W.3d at 93; Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). Because the petitioner failed to state a cognizable claim for relief, we conclude that the trial court did not err in dismissing his petition for writ of habeas corpus without a hearing.

CONCLUSION

Based on our review, we conclude that the petitioner has failed to state a valid claim for habeas corpus relief. Accordingly, we affirm the judgment of the trial court summarily dismissing the petition for writ of habeas corpus.

ALAN E. GLENN, JUDGE